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APR 14 2008

OFFICE OF PETITIONS

In re Application of :
Mark D. Scott et al. :
Application No. 09/323,765 :
Filed: June 1, 1999 :
Attorney Docket No. 259.006US1 :

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed August 27, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to file a proper appeal brief in response to the Final rejection mailed May 6, 2005 within the time period provided in 37 CFR 41.37(a)(1). No claims were allowed and the application became abandoned on May 27, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(II)(C) and (D). The renewed petition lacks item (1).

The Petition Decision mailed May 25, 2007 noted that items (1), (3) and (4) were missing from the petition filed August 28, 2006. The renewed petition includes a proper statement of unintentional delay, item (3) and a proper terminal disclaimer, item (4). The renewed petition does not include a proper Appeal Brief, item (1). The petition decision mailed May 25, 2007 noted in the Notification of Non-Compliant Appeal Brief that was attached to that decision what aspects of petitioner's Appeal Brief were non-compliant. In the instant petition, petitioner includes a **duplicate** copy of the Appeal Brief filed with the previous petition. Clearly the duplicate Appeal Brief suffers the same non-compliance issues as it did in the previous petition submission. See the attached copy of a new Notification of Non-Compliant Appeal Brief attached to this decision.

The petition to revive cannot be granted until such time as petitioner has provided a fully compliant Appeal Brief.


Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300**.

Telephone inquiries concerning this decision should be directed to the Carl Friedman at (571) 272-6842.


David Buccj
Petitions Examiner
Office of Petitions

Attachment: Copy of Notification of Non-Compliant Appeal Brief (37 CFR 41.37)

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/323,765	Applicant(s) SCOTT ET AL.	
	Examiner Robert C. Hayes, Ph.D.	Art Unit 1649	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 27 August 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

Continuation of 10. Other (including any explanation in support of the above items):

1) The "Summary of Claimed Subject Matter" on page 7, line 10, still states "and a method by which cells may be converted....". In contrast, the claimed invention is directed to only the product, "non-immunogenic cells"; thereby, confusing the issues on appeal (item 4 in defective brief Paper No: 20060425),

2) Page 8 of the brief for "Grounds of Rejection to be reviewed on Appeal", and page 9, line 12 still incorrectly states "1) Claims... have been rejected under 35 USC 102(e) as anticipated by Desai et al (U.S. Patent 5,578,442) in view [versus in light] of Lin et al [or Lin and Riggs... same reference]" (item 6 in defective brief Paper No: 20060425...). This is language for a rejection under 35 USC 103, not a rejection under 102; thereby, confusing the issues on appeal,

3) Arguments on page 11, lines 20,22 & 24, as well as page 12, line 19, etc. (also page 16, line 9 & page 19, line 21) still argue about "virus particles", which is not a topic for this application (item #6 in defective brief Paper No: 20060425); thereby, confusing the issues on appeal,

4) Arguments on page 16 of the brief (lines 1-2) correctly recite the 102(b) rejection, yet the discussion beginning on line 3 now states "claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al., in view of Francis et al...", this is the next and third rejection, not the second ground of rejection; thereby, confusing what is being appealed and argued,

5) Although copies of the references are now submitted (except, of course, U.S. Patent 5,578,442), Desai (WO 93/18649) is included in the evidence section, yet no rejections using this reference are of record; thereby, now confusing what Desai reference is being used in the rejection under 35 USC 103(a), which previously was clearly '442. This one particular WO reference should not be mentioned, nor included in the evidence appendix section.

8) Except for the cited Lin reference, none of the listed WO documents in the Evidence section have been made of record, or are they part of the rejections made of record. In addition, no copies of the prior art references relied upon in the rejections made of record have been submitted by Appellant for the Board's consideration.

It is again noted that Appellant is correct that the date for the Lin reference is 1974, and not 1976, as originally and correctly indicated on the 6/1/04 PTO-892. This is the sole reference by Lin et al made of record. Therefore, no confusion should be possible. Appropriate correction of this obvious typographical error in any subsequent communications by both Appellant and the Examiner should be made.